

CHAPTER 2

KEY POINTS *from Chapter 2*

- 1 Everyone experiences trauma.
- 2 The impact of having experienced trauma may manifest in a wide variety of responses and behaviors that should be considered contextually.
- 3 Trauma can change the brain, impact cognitive functioning and emotional responses, and influence behavior.
- 4 Having to engage in court processes can be traumatic in itself, and may compound the effects of other trauma.
- 5 For courts to address persons coming to court fairly, the court must become a “trauma-informed court.”

CHAPTER 2

Understanding Trauma, its Impacts, and How to Create a Trauma-Responsive Court

Recognizing Trauma and Its Impacts

Everyone experiences trauma over the course of their lives. Trauma can include a direct encounter with a dangerous or threatening event, or it can involve witnessing the endangerment or suffering of another living being. Traumatic events include emotional, physical, and sexual abuse; neglect; physical assaults; witnessing family, school, or community violence; war; racism; discrimination, bullying; acts of terrorism; fires; serious accidents; serious injuries; intrusive or painful medical procedures; loss of loved ones; abandonment; and separation. Traumatic events can overwhelm a person's capacity to cope and elicit intense feelings such as fear, terror, helplessness, hopelessness, and despair. Experiencing prolonged interpersonal trauma, particularly in childhood, can also affect people's feelings about themselves, other people, and the world, including their ability to trust and their ability to regulate emotions.



Promoting Well-Being in Domestic Relations Court

To provide guidance to courts working with parties who have experienced trauma, the National Council of Juvenile and Family Court Judges created [Assessing Trauma for Juvenile and Family Courts](#),¹ which provides these key definitions:

| Table 1: Key Definitions | |
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| Term | Definition |
| Acute Trauma | A single traumatic event that is limited in time. An earthquake, dog bite, or motor vehicle accident are all examples of acute trauma. |
| Chronic Trauma | Chronic trauma may refer to multiple and varied traumatic events such as a child who is exposed to domestic violence at home, is involved in a serious car accident, and then becomes a victim of community violence. It may also refer to longstanding trauma such as physical abuse of war. |
| Complex Trauma | Complex trauma is a term used to describe both exposure to chronic trauma—usually by adults entrusted with the child’s care, such as parents or caregivers—and the immediate and long-term impact of such exposure on the child. |
| Hypervigilance | Abnormally increased arousal, responsiveness to stimuli, and scanning of the environment for threats that can develop after exposure to dangerous and life-threatening events. |
| Resiliency | A pattern of positive adaptation in the context of past or present adversity. |
| Traumatic Reminders | A traumatic reminder is any person, situation, sensation, feeling, or thing that reminds a child of a traumatic event. When faced with these reminders, a child may re-experience the intense and disturbing feelings tied to the original trauma. |
| <p><i>Note:</i> From “Ten Things Every Juvenile Court Judge Should Know about Trauma and Delinquency,” by K. Buffington, C.B. Dierkhising, and S.C. March, 2010, <i>Juvenile and Family Court Journal</i>, 61(3), p. 16. Copyright 2010 by the National Council of Juvenile and Family Court Judges. Reprinted with permission.</p> | |

¹ E. Stoffel, A. Korthase, and M. Gueller, *Assessing Trauma for Juvenile and Family Court Judges: From Development to Implementation, 2013-2017* (Reno, NV: National Council of Juvenile and Family Court Judges, 2019).

The U.S. Department of Veterans Affairs also speaks to Post-Traumatic Stress Disorder: “It’s normal to have upsetting memories, feel on edge, or have trouble sleeping after a traumatic event. At first, it may be hard to do daily activities you are used to doing, like go to work, go to school, or spend time with people you care about. If it’s been longer than a few months and thoughts and feelings from the trauma are upsetting you or causing problems in your life, it may lead to symptoms of traumatic stress, or post-traumatic stress disorder (PTSD).”

PTSD is pervasive and deeply affecting. Some people develop PTSD after experiencing or witnessing a life-threatening event, like combat, a natural disaster, a car accident, or sexual assault. Studies have consistently found higher rates of PTSD among survivors of domestic violence.

A CDC study found that 80% of women who experience rape, stalking, or domestic violence by an intimate partner experience significant short- or long-term effects including PTSD.² Survivors of domestic violence in court may continue to experience ongoing danger, coercion, and custody-related threats, which can exacerbate traumatic impacts.

Just as sources of trauma vary, so will a person’s experience of trauma. Understanding the ways people can be affected by trauma can lead to better interactions between the court and persons served. As stated by the National Council of Juvenile and Family Court Judges; “**a trauma-informed court recognizes the pervasiveness and impact of trauma on both court personnel and the people who come before the court/litigants and court personnel and institutes practices to mitigate those effects and reduce further retraumatization.**”

Coming to court is traumatic in and of itself for many parties because the stakes are often so high. Further, for most people, court is an unknown environment, with its own language. A trauma-informed court considers how trauma may be impacting the presenting parties and factors that into interactions with parties. For example, is there something about the court process that is traumatic/traumatizing that could be mitigated? Is a person responding or behaving in ways that are interfering with their legal case, that need to be understood? Or is trauma, and its effects, specifically being raised in a legal case and need to be factored in?

Simply stated, a trauma-responsive court provides an atmosphere of dignity, respect, transparency, and safety. This includes supporting people who have experienced trauma to feel empowered and engaged in court proceedings, as well as awareness of situations where responses to trauma may be evoked, such as participation in a contested court hearing or custody evaluation.

This chapter focuses on the practical challenges that domestic relations courts often face in working with parties who have experienced trauma and offers practical suggestions to improve engagement.

² M. C. Black et al., *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report* (Atlanta: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 2011).

How Trauma Can Impact the Ways People Present in Court

Those who have experienced trauma may present patterns of behaviors that are a function of the trauma but could lead a court to misread the behavior or misinterpret the relief required.

Trauma may impact how parties are perceived by judges and court staff. Trauma responses may be misinterpreted as dishonesty, denial, or resistance. Trauma symptoms can affect a person's ability to retell their stories and engage in the legal process. If a person has been abused, recounting the abuse can cause a person to re-experience the abuse, interfering with their ability to communicate or stay emotionally present. Because trauma affects memory, it may impact one's ability to recount details in a linear fashion. For example, if a party has a flashback (i.e., relives the experience of abuse as if it were happening in the present) and is unable to describe what happened clearly, they may not be viewed as credible. For people who have experienced trauma at the hands of someone they had previously trusted or someone in a position of authority, the betrayal of trust may make it difficult to trust in the fairness of court proceedings or the intentions of court personnel. Being aware of why people may have reasons not to view us as trustworthy can help us to not take those responses personally and allow us to respond more helpfully and effectively.

The National Child Traumatic Stress Network and the Trauma-Informed Community Network have each identified examples of how trauma can manifest, whether in the courtroom or in the life of the traumatized person, such as:

- Highly anxious demeanor
- Hypervigilance
- Inappropriate smiling or laughter
- Extreme passivity
- Non-responsiveness to simple questions
- Unexpected reactions/overactions (anger, hostility)
- Distractibility (jittering, fidgeting, difficulty focusing)
- Difficulty regulating emotions
- Avoidance of people/places/situations
- Difficulty sleeping
- Substance Use Disorder
- Difficulty coping with change or unanticipated circumstance

Fight, Flight, or Freeze

Parents in court may show responses to past traumatic events that are triggered by being in the presence of the person who has harmed them or their child or just from having to think and talk about those experiences. The fight, flight, or freeze response refers to involuntary physiological changes that happen in the body and mind when a person feels threatened: a person may feel extremely alert, agitated, confrontational, or like they need to leave a room or location. While the person who is “frozen” is extremely alert, they are also unable to move or take action against the danger.³ This response exists to keep people safe, preparing them to face, escape, or hide from danger. However, people can experience this response whether the danger is real or not, which can lead to these responses becoming/being activated in situations where it is not necessary. Dissociation (disconnection between a person’s thoughts, memories, feelings, actions, or sense of who they are) is also a common response to trauma: a way of psychologically distancing when real escape is not possible. In court, this may appear as disinterest or lack of engagement, when it is in fact, an involuntary protective response. In situations of domestic violence where the trauma is ongoing, fight, flight, freeze, and dissociation may be responses to ongoing danger, threats, and coercive control. Courts can work effectively with parties who may be experiencing a range of impacts by building a more trauma-informed court.

Required Elements in Building a Trauma-Informed Court

Judicial Leadership

Creating a trauma-informed court begins with judicial leadership. Judges are adept and successful in convening and facilitating the necessary court personnel and stakeholders to begin the discussion and education about the complexity of trauma. “Judges can facilitate this open exchange of perspectives to increase stakeholder engagement in creating a trauma-informed court, develop a shared vision of how to serve youth, children [and adults/individuals] better, and allay fears that being trauma-informed is just a passing fad that won’t be sustainable or lead to valuable, long-term system transformation.”⁴

³ M. West, M., “What Is the Fight, Flight, or Freeze Response?” *Medical News Today* (July 28, 2021). Retrieved from <https://www.medicalnewstoday.com/articles/fight-flight-or-freeze-response>.

⁴ Stoffel, Korthase, and Gueller, *supra* note 1.

Promoting Well-Being in Domestic Relations Court

Trauma Team

Judges should convene the trauma team. Development of a trauma team is necessary to develop, implement and support trauma-informed practices within the court. Ideally, the Trauma Team represents the stakeholders in the community and can help identify needs and meet them. The trauma team is also responsible for promoting and supporting trauma-informed practices and recognizing trauma responses in adults, youth, and families, as well as in court staff and others involved in the court system. The trauma team is responsible for fully integrating knowledge about trauma into the court's policies, procedures, and practices with a goal of actively avoiding and resisting re-traumatization.

Developing a Shared Understanding of Trauma

In creating a trauma-informed-court it is important to have a shared understanding and definition of trauma. Each court and its stakeholders should collaboratively work to define trauma based on their shared understanding and in response to their own community. Some communities will have shared traumatic experiences, as with a shooting, or some may have more concentrated populations that have experienced trauma, such as those located near military installations. To provide one example, the Fairfax Juvenile and Domestic Relations District Court, Fairfax, Virginia defines trauma as “the emotional response that occurs when a person’s capacity to cope is overwhelmed by a negative event, series of events, or set of circumstances.” By naming the trauma experienced, it will be more clear to the court and the community when someone is experiencing traumatic effects.

Education and Training on Trauma for All Court Personnel

All court personnel, including judges, prosecutors, clerks, security officers, probations officers, intake officers, court administrators, and detention/correctional officers, must include in-house education and training on trauma within their training curriculum. Front-line workers should be trained in emotional regulation and be given information to connect clients with referrals and resources for trauma services. Staff should be provided with trauma-informed supports and training education with the goal of empowering them to build their own resiliency to best meet the needs of their trauma-impacted clients and to maintain work/life balance. Safe supportive opportunities to talk about what they are experiencing, and to share strategies for addressing concerns and feelings that arise, are also important.

Trauma training should be included in orientation and mandatory for all newly hired staff. Ongoing and updated training and collaboration with court stakeholders should be held regularly. Ongoing training and education will help court personnel recognize the signs of trauma in

litigants, adults, youth, and families involved in the court system, as well as within themselves, to resist re-traumatization.⁵

Collaboration Across Systems to Enhance Continuity of Care

The process of creating a trauma-informed court involves the greater community. The Trauma Team identified above must work across systems to enhance community response and continuity of care. Collaborative partners should include social services, school, behavioral health, law enforcement, health care and substance use treatment/recovery support, domestic violence programs, vocational education and resources, corrections, mentors, faith-based organizations, and other community resources and providers. The court's partners and stakeholders, including attorneys, prosecutors, defense attorneys, guardians *ad litem*, advocates, court-appointed special advocates, and other court volunteers, must have regular and ongoing basic trauma education and training.



Family Justice Principle 10, “Identify and Strengthen Community Partnerships,”⁶ refers to this from the Alaska’s Justice for All campaign:

Expanding access to justice requires innovation and moving past the idea that an attorney or a courtroom is the best or only solution for [citizens]. Partnering across legal, social services, medical and information providers to address the array of justice needs that people face may be the key to the early detection, diagnosis and intervention necessary to empower [citizens] to solve their problems before they find themselves in the legal system.⁷

⁵ National Child Traumatic Stress Network, “Trauma-Informed Policies and Procedures: Essential Elements” (n.d.).

⁶ Family Justice Initiative, *Principles for Family Justice Reform* (Williamsburg, VA: National Center for State Courts, 2019).

⁷ Alaska Court System, Justice for All (n.d.). Retrieved from <https://courts.alaska.gov/jfa/index.htm>.

Avoid Re-Traumatizing Parties

Safeguards should be put in place to ensure that parties are not re-traumatized by the need for multiple retellings of their traumatic experiences and history.⁸ Courts have access to a wealth of information regarding parties such as screenings and assessment. By being aware of the assessments that are kept and by whom, and by establishing a formal protocol, stakeholders can know the conditions under which the information can be shared.

Judges and staff should inquire of parties whether there are court conditions that are traumatic for them or inhibit their full participation and discuss mitigation strategies. To provide one example: when parties are ordered to mediation, the Nebraska Office of Dispute Resolution conducts an evidence-based screening to consider if a party has experienced trauma or domestic violence to schedule appropriate, specialized services to protect parties and the process.

Promoting a Positive Atmosphere in Court—Trauma Audits

Trauma Audit protocols are available to view the court through a trauma lens. Doing so will enable the court to decide what physical improvements can be made to improve safety and persons' ability to engage in proceedings.

Per the Substance Abuse and Mental Health Services Administration (SAMHSA), another essential component of a trauma-informed court begins with judicial interactions and treating individuals who come before the court with dignity and respect. Not only are these concepts core to procedural justice, but they will promote a sense of safety, personal agency, and connectedness among parties and court personnel alike.² Court professionals, particularly judicial officers, should engage in specific behaviors when engaging with litigants in the courtroom to reduce their stress and help them feel safe. These include speaking directly to parties by name, treating everyone in the courtroom with respect, and giving parties an opportunity to be heard.

The Office of Victims of Crime recommends the following in designing trauma-informed court space:

- **Encourage Suggestions [from the Trauma Team] and Other Court Stakeholders.** Encourage parties to cases, attorneys, and guardians ad litem to make specific requests for any possible and reasonable adjustment to the proceedings. This might

⁸ C. B. Dierkhising, S. Ko, and J. H. Goldman, *Trauma-Informed Juvenile Justice Roundtable: Current Issues and Directions in Creating Trauma Informed Juvenile Justice Systems* (Los Angeles and Durham, NC: National Center for Child Traumatic Stress, 2013).

include preventing an abusive party from trying to intimidate their partner during the court proceedings.

- **Step Down and Leave the Judge’s Robe at the Bench.** “The intimidation factor perceived by pro se parties and children in a courtroom when interacting with an authority figure (dressed differently and seated in an elevated location) can invoke trauma triggers or otherwise discourage interaction.” The court can consider arranging seating to be more conducive to interaction, such as a semicircle. On a limited basis, if no one’s personal safety is compromised, a judicial officer may sit on the same level as parties. Leaving the judge’s robe on the bench is another option to encourage interaction.
- **Adjust the Lighting in the Courtroom.** Often courtrooms have multiple lighting options, and decreasing the lighting may feel more comfortable to individuals who are light sensitive or have certain sensory limitations. For others, dimming the lights could be potentially triggering. Cultivating awareness of impacts on parties and being open to accommodations is an effective practice.
- **Provide Simple Conveniences Like a Box of Tissues or a Bowl of Snacks.** These small amenities send a message to help parties feel at ease.

Resources

- [ACEs \(Adverse Childhood Experiences\)](#)
- [International Society for Traumatic Stress Studies— STRESS \(Structured Trauma-Related Experiences and Symptoms Screener\)](#)
- [International Society for Traumatic Stress Studies—Childhood Attachment and Relational Trauma Screen \(CARTS\)](#)
- [Trauma for the Juvenile Judge](#)
- [Vicarious Trauma in Child Welfare and Juvenile Justice Systems](#)
- [National Center for State Courts Behavioral Health eLearning Series](#)
- [National Council of Juvenile and Family Court Judges: Assessing Trauma for Juvenile and Family Courts](#)
- [Conference of State Court Administrators: Courts Need to Enhance Access to Justice in Rural America](#)